

BellSouth Telecommunications, Inc.
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Guy M. Hicks
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December 12, 2000

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Approval of the Cross Connect Agreement Negotiated by BellSouth Telecommunications, Inc. and ITC DeltaCom Communications, Inc., d/b/a ITC DeltaCom Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*
Docket No. 97-00419

00-01110

Dear Mr. Waddell:

Pursuant to Section 252(e) of the Telecommunications Act of 1996, *ITC DeltaCom Communications, Inc., d/b/a ITC DeltaCom* and BellSouth Telecommunications, Inc. are hereby submitting to the Tennessee Regulatory Authority the original and thirteen copies of the attached Petition for Approval of the Cross Connect Agreement dated November 16, 2000.

Thank you for your attention to this matter.

Sincerely yours,


Guy M. Hicks

cc: Senior Manager – Industry Relations, ITC DeltaCom
Director – Regulatory Affairs, ITC DeltaCom

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In re: *Approval of the Cross Connect Agreement Negotiated by BellSouth Telecommunications, Inc. and ITC'DeltaCom Communications, Inc., d/b/a ITC'DeltaCom Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*

Docket No. ~~97-00419~~
∞-61110

**PETITION FOR APPROVAL OF THE
CROSS CONNECT AGREEMENT NEGOTIATED
BETWEEN BELL SOUTH TELECOMMUNICATIONS, INC.
AND ITC'DELTACOM COMMUNICATIONS, INC. D/B/A ITC'DELTACOM
PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996**

COME NOW, ITC'DeltaCom Communications, Inc. d/b/a ITC'DeltaCom ("ITC'DeltaCom") and BellSouth Telecommunications, Inc., ("BellSouth"), and file this request for approval of the Cross Connect Agreement (the "Agreement") negotiated between the two companies pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, (the "Act"). In support of their request, ITC'DeltaCom and BellSouth state the following:

1. ITC'DeltaCom and BellSouth have entered into good faith negotiations pursuant to the Act to renegotiate an Agreement to replace the existing Agreement between the Parties, which expired on June 30, 1999 ("Expired Agreement").
2. Until such time as ITC'DeltaCom and BellSouth execute a new agreement, BellSouth and ITC'DeltaCom desire to continue to operate under the rates, terms and conditions of the Expired Agreement.
3. BellSouth is agreeable to provide Cross Connect devices to ITC'DeltaCom subject to the terms and conditions set forth in the Cross Connect Agreement. A copy of the Cross Connect Agreement is attached hereto and incorporated herein by reference.

2. Pursuant to Section 252(e) of the Telecommunications Act of 1996, ITC^DeltaCom and BellSouth are submitting their Agreement to the TRA for its consideration and approval.

3. In accordance with Section 252(e) of the Act, the TRA is charged with approving or rejecting the negotiated Agreement between BellSouth and ITC^DeltaCom within 90 days of its submission. The Act provides that the TRA may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity.

4. ITC^DeltaCom and BellSouth aver that the Agreement is consistent with the standards for approval.

5. Pursuant to Section 252(i) of the Act, BellSouth shall make the Agreement available upon the same terms and conditions contained therein.

ITC^DeltaCom and BellSouth respectfully request that the TRA approve the Agreement negotiated between the parties.

This 13th day of Dec, 2000.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 


Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301
Attorney for BellSouth

CERTIFICATE OF SERVICE

I, Guy M. Hicks, hereby certify that I have served a copy of the foregoing Petition for Approval of the Cross Connect Agreement on the following via United States Mail on the 13th day of Dec, 2000.

ITC^DeltaCom
Senior Manager – Industry Relations
1530 DeltaCom Drive
P.O. Box 787
Anniston, AL 36202

Director – Regulatory Affairs
ITC^DeltaCom
4092 South Memorial Parkway
Huntsville, AL 35802



Guy M. Hicks

CROSS CONNECT AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom, hereinafter referred to as ("ITC^DeltaCom") an Alabama corporation. This agreement may refer to either BellSouth or ITC^DeltaCom or both as a "Party" or "Parties. "

RECITALS

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, ITC^DeltaCom is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement pursuant to the Act; and

WHEREAS, BellSouth and ITC^DeltaCom have entered into good faith negotiations pursuant to the Act to renegotiate an Agreement to replace the existing Agreement between the Parties, which expired on June 30, 1999, ("Expired Agreement"); and

WHEREAS, until such time as the Parties execute a new agreement, BellSouth and ITC^DeltaCom shall continue to operate under the rates, terms and conditions of the Expired Agreement; and

WHEREAS, BellSouth is agreeable to provide Cross Connect devices subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Interim Agreement, ITC^DeltaCom and BellSouth hereby agree as follows:

GENERAL TERMS AND CONDITIONS

1. Introduction

- 1.1 This Agreement sets forth the terms, conditions and prices under which BellSouth will, upon request, provide and ITC^DeltaCom will compensate BellSouth for cross connect devices in accordance with the terms and conditions set forth herein, and the schedule of prices set forth in Attachment 1 to the Agreement, which is incorporated herein by reference, in and for Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

- 1.2 This Agreement further sets forth the terms and conditions for implementation of disaster recovery in Attachment 2 to the Agreement which is incorporated herein by reference.
- 1.3 BellSouth and ITC^DeltaCom may fulfill the requirements imposed upon them by this Agreement by themselves or may cause their agents to take action to fulfill such responsibilities.
- 1.4 This Agreement includes and incorporates herein the Attachments to this Agreement, and all Appendices, Exhibits, Schedules, Addenda and Amendments hereto.

2. Interpretation and Construction

- 2.1 For purposes of this Agreement, certain terms have been defined in the body of the Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word.
- 2.2 The definitions in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" throughout this Agreement. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory obligation. The use of one or the other shall not mean a different degree of right or obligation for either Party.
- 2.3 References herein to Articles, Sections, Exhibits, Attachments, Appendices, and Schedules shall be deemed to be references to Articles and Sections of, and Exhibits, Attachments, Appendices and Schedules to, this Agreement unless the context shall otherwise require.
- 2.4 The headings of the Articles, Sections, Exhibits, Attachments, Appendices and Schedules are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- 2.5 Unless the context shall otherwise require, any reference to any agreement, other instrument (including BellSouth, ITC^DeltaCom or any third party offerings, guides or practices), statute, regulation, rule or Tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).
- 2.6 Subject to the terms set forth in Attachment 1 regarding rates and charges, each Party hereby incorporates by reference those provisions of its Tariffs that govern the provision of any of the services or facilities provided hereunder. However, if any provision of this Agreement and any

applicable Tariff cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement shall prevail. If any provision contained in the main body of this Agreement and any Attachment, Schedule, Appendix or Exhibit hereto cannot reasonably be construed or interpreted to avoid conflict, the provision contained in the main body of this Agreement shall prevail. The fact that a condition, right, obligation, or other term appears in this Agreement but not in any such Tariff shall not be interpreted as, or be deemed grounds for finding of a conflict for purposes of this Section 2.

3. Effective Date

This Agreement becomes effective on the date when executed by both Parties (the "Effective Date").

4. Term of the Agreement

4.1 This Agreement shall remain in effect until such time as the Parties execute a new agreement upon an effective order by the Commission resolving the disputes at issue in the pending arbitration proceeding.

4.2 This Agreement shall terminate on the Effective Date of a new Agreement between the Parties.

5. Liability and Indemnification

5.1 BellSouth Liability. BellSouth shall take financial responsibility for its own actions in causing, or its lack of action in preventing, unbillable or uncollectible ITC^DeltaCom revenues.

5.2 Liability for Acts or Omissions of Third Parties. Neither BellSouth nor ITC^DeltaCom shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.

5.3 Limitation of Liability.

5.3.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by ITC^DeltaCom, any ITC^DeltaCom customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of

this Part A, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by ITC^DeltaCom pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Part A, ITC^DeltaCom's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by ITC^DeltaCom, any ITC^DeltaCom customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by ITC^DeltaCom resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability. Likewise, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of ITC^DeltaCom and claims for damages by BellSouth resulting from the failure of ITC^DeltaCom to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

5.3.2 Limitations in Tariffs. Subject to the provisions of 5.3.1, a Party may, in its sole discretion, provide in its tariffs and contracts with its Customer and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to Customer or third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such party would have charged that applicable person for the service, product or function that gave rise to such Loss and (ii) Consequential Damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a Loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such Loss.

5.3.3 Neither BellSouth nor ITC^DeltaCom shall be liable for damages to the other's terminal location, POI or other company's customers' premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a company's negligence or willful misconduct or by a company's failure to properly ground a local loop after disconnection.

5.3.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of

equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the Services, or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

- 5.4 **Indemnification for Certain Claims.** BellSouth and ITC^DeltaCom providing services, their affiliates and their parent company, shall be indemnified, defended and held harmless by each other against any claim, loss or damage arising from the receiving company's use of the services provided under this Agreement pertaining to (1) claims for libel, slander, invasion of privacy or copyright infringement arising from the content of the receiving company's own communications, or (2) any claim, loss or damage claimed by the other company's customer arising from one company's use or reliance on the other company's services, actions, duties, or obligations arising out of this Agreement; provided that in the event of a claim arising under this Section 5.4(2), to the extent any claim, loss or damage is caused by the gross negligence or willful misconduct of the providing party, the receiving Party shall have no obligation to indemnify, defend or hold harmless the providing Party hereunder, subject to the other terms of this Section 5.
- 5.5 **Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.
- 5.6 ITC^DeltaCom and BellSouth will work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, or any other services related to this Agreement. The Parties fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.
6. **Treatment of Proprietary and Confidential Information**
- 6.1 **Confidential Information.** It may be necessary for BellSouth and ITC^DeltaCom to provide each other with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to

as "Information"). All Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. The Information shall not be copied or reproduced in any form. BellSouth and ITC^DeltaCom shall receive such Information and not disclose such Information. BellSouth and ITC^DeltaCom shall protect the Information received from distribution, disclosure or dissemination to anyone except employees of BellSouth and ITC^DeltaCom with a need to know such Information and which employees agree to be bound by the terms of this Section. BellSouth and ITC^DeltaCom will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information. Where customer specific information or critical network information is communicated orally to designated company representatives in furtherance of this Agreement, both Parties agree that those employees shall protect such Information from disclosure to anyone except employees of BellSouth and ITC^DeltaCom with a need to know such Information.

- 6.2 Exception to Obligation. Notwithstanding the foregoing, there will be no obligation on BellSouth or ITC^DeltaCom to protect any portion of the Information that is: (1) made publicly available by the owner of the Information or lawfully disclosed by a Party other than BellSouth or ITC^DeltaCom; (2) lawfully obtained from any source other than the owner of the Information; or (3) previously known to the receiving Party without an obligation to keep it confidential.

7. Assignments

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate company of the Party without the consent of the other Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment of delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations.

8. Resolution of Disputes

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission for a resolution of the dispute; provided, however, that to the extent any issue disputed hereunder involves issues beyond the scope of authority or jurisdiction of the Commission, the parties may seek initial resolution of such dispute in another appropriate forum. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9. **Limitation of Use**

The Parties agree that this Agreement shall not be offered by either Party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other Party in that jurisdiction or for any other purpose.

10. **Taxes**

10.1 **Definition.** For purposes of this Section, the terms "taxes" and "fees" shall include but not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

10.2 **Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.**

10.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

10.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

10.3 **Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.**

10.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

10.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

10.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is

exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

10.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

10.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

10.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

10.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

10.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.

10.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

10.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they

are actually billed by the providing Party at the time that the respective service is billed.

- 10.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 10.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 10.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 10.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 10.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 10.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

11. Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use best efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

12. Modification of Agreement

- 12.1 BellSouth shall make available to ITC^DeltaCom, pursuant to 47 USC § 252, the FCC rules and regulations and the Supreme Court Order in AT&T Corporation v. Iowa Utilities Board regarding such availability, any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement.
- 12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 12.3 Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).
- 12.4 In the event that any final and effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of ITC^DeltaCom or BellSouth to perform any material terms of this Agreement, ITC^DeltaCom or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new

terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section 11.

- 12.5 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be effective thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.
- 12.6 If ITC^DeltaCom changes its name or makes changes to its structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of ITC^DeltaCom to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

13. Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

14. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

15. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.

16. Notices

- 16.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

CLEC Account Team
9th Floor
600 North 19th Street
Birmingham, Alabama 35203

and

General Attorney - COU
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

ITC^DeltaCom
Senior Manager – Industry Relations
1530 DeltaCom Drive
PO Box 787
Anniston, AL 36202

and

Director – Regulatory Affairs
4092 South Memorial Parkway
Huntsville, AL 35802

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 16.2 Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.
- 16.3 BellSouth shall provide ITC^DeltaCom 45-day advance notice via Internet posting of price changes and of changes to the terms and conditions of services available for resale. To the extent that revisions occur between the time BellSouth notifies ITC^DeltaCom of changes under this Agreement and the time the changes are scheduled to be implemented, BellSouth will immediately notify ITC^DeltaCom of such revisions consistent with its internal notification process. ITC^DeltaCom may not hold BellSouth responsible for any cost incurred as a result of such revisions, unless such costs are incurred as a result of BellSouth's intentional misconduct. ITC^DeltaCom may not utilize any notice given under this subsection concerning a service to market resold offerings of that service in advance of BellSouth.

17. Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

18. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

19. Multiple Counterparts

This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

20. Performance Standards and Measures

For purposes of this Agreement, Performance Standards and Measures shall be applied in compliance with any state or federal rule or regulation.

21. Entire Agreement

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year above first written.

BellSouth Telecommunications, Inc.

Pat C. Fenlen
Signature

PATRICK C. FENLEN
Name

MANAGING DIRECTOR
Title

11/16/00
Date

ITC^DeltaCom Communications, Inc.

Tom Mueller
Signature

Name

Title

Date

**Cross Connect
Schedule of Rates and Charges**

Element	USOC	AL	FL	GA	LA	MS	SC	TN
2-wire								
Recurring	PE1P2	\$031	\$074	\$031	\$036	\$038	\$034	\$033
NRC - 1 st	PE1P2	\$33.68	\$34.53	\$33.76	\$33.61	\$33.65	\$33.75	\$33.82
NRC - Add'l	PE1P2	\$31.79	\$32.51	\$31.86	\$31.76	\$31.77	\$31.86	\$31.92
4-wire								
Recurring	PE1P4	\$062	\$148	\$061	\$073	\$076	\$068	\$066
NRC - 1 st	PE1P4	\$33.63	\$34.54	\$33.77	\$33.53	\$33.46	\$33.71	\$33.94
NRC - Add'l	PE1P4	\$31.67	\$32.53	\$31.80	\$31.58	\$31.52	\$31.75	\$31.95
DS-1								
Recurring	PE1P1	\$1.28	\$1.29	\$1.13	\$1.20	\$1.30	\$1.12	\$1.51
NRC - 1 st	PE1P1	\$52.93	\$54.15	\$53.05	\$52.80	\$52.73	\$53.05	\$53.27
NRC - Add'l	PE1P1	\$39.87	\$40.94	\$39.99	\$39.76	\$39.70	\$39.96	\$40.16
DS-3								
Recurring	PE1P3	\$16.27	\$17.48	\$14.43	\$15.26	\$16.55	\$14.21	\$19.26
NRC - 1 st	PE1P3	\$51.99	\$53.28	\$52.14	\$51.86	\$51.78	\$52.11	\$52.37
NRC - Add'l	PE1P3	\$38.59	\$39.65	\$38.71	\$38.49	\$38.43	\$38.68	\$38.89
2-fiber								
Recurring	PE1F2	\$3.23	\$2.96	\$2.86	\$3.03	\$3.28	\$2.82	\$3.82
NRC - 1 st	PE1F2	\$52.00	\$53.28	\$52.14	\$51.86	\$51.78	\$52.11	\$52.37
NRC - Add'l	PE1F2	\$38.60	\$39.66	\$38.72	\$38.49	\$38.43	\$38.69	\$38.89
4-fiber								
Recurring	PE1F4	\$5.73	\$5.66	\$5.08	\$5.38	\$5.83	\$5.01	\$6.79
NRC - 1 st	PE1F4	\$64.54	\$66.08	\$64.74	\$64.36	\$64.27	\$64.69	\$65.03
NRC - Add'l	PE1F4	\$51.14	\$52.47	\$51.31	\$50.99	\$50.91	\$51.29	\$51.55

BELLSOUTH
DISASTER RECOVERY PLANNING

for

CLECS

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1.0 PURPOSE

In the unlikely event of a disaster occurring that affects BellSouth's long-term ability to deliver traffic to a Competitive Local Exchange Carrier (CLEC), general procedures have been developed to hasten the recovery process. Since each location is different and could be affected by an assortment of potential problems, a detailed recovery plan is impractical. However, in the process of reviewing recovery activities for specific locations, some basic procedures emerge that appear to be common in most cases.

These general procedures should apply to any disaster that affects the delivery of traffic for an extended time period. Each CLEC will be given the same parity consideration during an outage and service will be restored as quickly as possible.

This document will cover the basic recovery procedures that would apply to every CLEC.

2.0 SINGLE POINT OF CONTACT

When a problem is experienced, regardless of the severity, the BellSouth Network Management Center (NMC) will observe traffic anomalies and begin monitoring the situation. Controls will be appropriately applied to insure the sanity of BellSouth's network; and, in the event that a switch or facility node is lost, the NMC will attempt to circumvent the failure using available reroutes.

BellSouth's NMC will remain in control of the restoration efforts until the problem has been identified as being a long-term outage. At that time, the NMC will contact BellSouth's Emergency Control Center (ECC) and relinquish control of the recovery efforts. Even though the ECC may take charge of the situation, the NMC will continue to monitor the circumstances and restore traffic as soon as damaged network elements are revitalized.

The telephone number for the BellSouth Network Management Center in Atlanta, as published in Telcordia's National Network Management Directory, is 404-321-2516. The telephone number for ITC^DeltaCom's Switch Control Center is 888-430-2722.

3.0 IDENTIFYING THE PROBLEM

During the early stages of problem detection, the NMC will be able to tell which CLECs are affected by the catastrophe. Further analysis and/or first hand observation will determine if the disaster has affected CLEC equipment only; BellSouth equipment only or a combination. The initial restoration activity will be largely determined by the equipment that is affected.

Once the nature of the disaster is determined and after verifying the cause of the problem, the NMC will initiate reroutes and/or transfers that are jointly agreed upon by the affected CLECs' Network Management Center and the BellSouth NMC. The type and percentage of controls used will depend upon available network capacity. Controls necessary to stabilize the situation will be invoked and the NMC will attempt to re-establish as much traffic as possible.

For long term outages, recovery efforts will be coordinated by the Emergency Control Center (ECC). Traffic controls will continue to be applied by the NMC until facilities are re-established. As equipment is made available for service, the ECC will instruct the NMC to begin removing the controls and allow traffic to resume.

3.1 SITE CONTROL

In the total loss of building use scenario, what likely exists will be a smoking pile of rubble. This rubble will contain many components which could be dangerous. It could also contain any personnel on the premises at the time of the disaster. For these reasons, the local fire marshal with the assistance of the police will control the site until the building is no longer a threat to surrounding properties and the companies have secured the site from the general public.

During this time, the majority owner of the building should be arranging for a demolition contractor to mobilize to the site with the primary objective of reaching the cable entrance facility for a damage assessment. The results of this assessment would then dictate immediate plans for restoration, both short term and permanent.

In a less catastrophic event, i.e., the building is still standing and the cable entrance facility is usable, the situation is more complex. The site will initially be controlled by local authorities until the threat to adjacent property has diminished. Once the site is returned to the control of the companies, the following events should occur.

An initial assessment of the main building infrastructure systems (mechanical, electrical, fire & life safety, elevators, and others) will establish building needs. Once these needs are determined, the majority owner should lead the building restoration efforts. There may be situations where the site will not be totally restored within the confines of the building. The companies must individually determine their needs and jointly assess the cost of permanent restoration to determine the overall plan of action.

Multiple restoration trailers from each company will result in the need for designated space and installation order. This layout and control is required to maximize the amount of restoration equipment that can be placed at the site, and the priority of placements.

Care must be taken in this planning to insure other restoration efforts have logistical access to the building. Major components of telephone and building equipment will need to be removed and replaced. A priority for this equipment must also be jointly established to facilitate overall site restoration. (Example: If the AC switchgear has sustained damage, this would be of the highest priority in order to regain power, lighting, and HVAC throughout the building.)

If the site will not accommodate the required restoration equipment, the companies would then need to quickly arrange with local authorities for street closures, rights of way or other possible options available.

3.2 ENVIRONMENTAL CONCERNS

In the worse case scenario, many environmental concerns must be addressed. Along with the police and fire marshal, the state environmental protection department will be on site to monitor the situation.

Items to be concerned with in a large central office building could include:

1. Emergency engine fuel supply. Damage to the standby equipment and the fuel handling equipment could have created "spill" conditions that have to be handled within state and federal regulations.
2. Asbestos containing materials that may be spread throughout the wreckage. Asbestos could be in many components of building, electrical, mechanical, outside plant distribution, and telephone systems.
3. Lead and acid. These materials could be present in potentially large quantities depending upon the extent of damage to the power room.
4. Mercury and other regulated compounds resident in telephone equipment.
5. Other compounds produced by the fire or heat.

Once a total loss event occurs at a large site, local authorities will control immediate clean up (water placed on the wreckage by the fire department) and site access.

At some point, the companies will become involved with local authorities in the overall planning associated with site clean up and restoration. Depending on the clean up approach taken, delays in the restoration of several hours to several days may occur.

In a less severe disaster, items listed above are more defined and can be addressed individually depending on the damage.

In each case, the majority owner should coordinate building and environmental restoration as well as maintain proper planning and site control.

4.0 THE EMERGENCY CONTROL CENTER (ECC)

The ECC is located in the Colonnade Building in Birmingham, Alabama. During an emergency, the ECC staff will convene a group of pre-selected experts to inventory the damage and initiate corrective actions. These experts have regional access to BellSouth's personnel and equipment and will assume control of the restoration activity anywhere in the nine state area.

In the past, the ECC has been involve with restoration activities resulting from hurricanes, ice storms and floods. They have demonstrated their capabilities during these calamities as well as during outages caused by human error or equipment failures. This group has an excellent record of restoring service as quickly as possible.

During a major disaster, the ECC may move emergency equipment to the affected location, direct recovery efforts of local personnel and coordinate service restoration activities with the CLECs. The ECC will attempt to restore service as quickly as possible using whatever means are available; leaving permanent solutions, such as the replacement of damaged buildings or equipment, for local personnel to administer.

Part of the ECC's responsibility, after temporary equipment is in place, is to support the NMC efforts to return service to the CLECs. Once service has been restored, the ECC will return control of the network to normal operational organizations. Any long-term changes required after service is restored will be made in an orderly fashion and will be conducted as normal activity.

5.0 RECOVERY PROCEDURES

The nature and severity of any disaster will influence the recovery procedures. One crucial factor in determining how BellSouth will proceed with restoration is whether or not BellSouth's equipment is incapacitated. Regardless of who's equipment is out of service, BellSouth will move as quickly as possible to aid with service recovery; however, the approach that will be taken may differ depending upon the location of the problem.

5.1 CLEC OUTAGE

For a problem limited to one CLEC (or a building with multiple CLECs), BellSouth has several options available for restoring service quickly. For those CLECs that have agreements with other CLECs, BellSouth can immediately start directing traffic to a provisional CLEC for completion. This alternative is dependent upon BellSouth having concurrence from the affected CLECs.

Whether or not the affected CLECs have requested a traffic transfer to another CLEC will not impact BellSouth's resolve to re-establish traffic to the original destination as quickly as possible.

5.2 BELL SOUTH OUTAGE

Because BellSouth's equipment has varying degrees of impact on the service provided to the CLECs, restoring service from damaged BellSouth equipment is different. The outage will probably impact a number of Carriers simultaneously. However, the ECC will be able to initiate immediate actions to correct the problem.

A disaster involving any of BellSouth's equipment locations could impact the CLECs, some more than others. A disaster at a Central Office (CO) would only impact the delivery of traffic to and from that one location, but the incident could affect many Carriers. If the Central Office is a Serving Wire Center (SWC), then traffic from the entire area to those Carriers served from that switch would also be impacted. If the switch functions as an

Access Tandem, or there is a tandem in the building, traffic from every CO to every CLEC could be interrupted. A disaster that destroys a facility hub could disrupt various traffic flows, even though the switching equipment may be unaffected.

The NMC would be the first group to observe a problem involving BellSouth's equipment. Shortly after a disaster, the NMC will begin applying controls and finding reroutes for the completion of as much traffic as possible. These reroutes may involve delivering traffic to alternate Carriers upon receiving approval from affected carriers and notification of the CLECs involved. In some cases, changes in translations will be required. If the outage is caused by the destruction of equipment, then the ECC will assume control of the restoration.

5.2.1 Loss of a Central Office

When BellSouth loses a Central Office, the ECC will

- a) place specialists and emergency equipment on notice;
- b) inventory the damage to determine what equipment and/or functions are lost;
- c) move containerized emergency equipment and facility equipment to the stricken area, if necessary;
- d) begin reconnecting service for Hospitals, Police and other emergency agency customers of CLECs and BellSouth in a nondiscriminatory manner in accordance with NSEP-TSP guidelines; and
- e) begin restoring service to CLECs and other customers.

5.2.2 Loss of a Central Office with Serving Wire Center Functions

The loss of a Central Office that also serves as a Serving Wire Center (SWC), will be restored as described in section 5.2.1.

5.2.3 Loss of a Central Office with Tandem Functions

When BellSouth loses a Central Office building that serves as an Access Tandem and as a SWC, the ECC will

- a) place specialists and emergency equipment on notice;
- b) inventory the damage to determine what equipment and/or functions are lost;
- c) move containerized emergency equipment and facility equipment to the stricken area, if necessary;
- d) begin reconnecting service for Hospitals, Police and other emergency agency customers of CLECs and BellSouth in a nondiscriminatory manner in accordance with NSEP-TSP guidelines; and

- e) redirect as much traffic as possible to the alternate access tandem (if available) for delivery to those CLECs utilizing a different location as a SWC;
- f) begin aggregating traffic to a location near the damaged building. From this location, begin re-establishing trunk groups to the CLECs for the delivery of traffic normally found on the direct trunk groups. (This aggregation point may be the alternate access tandem location or another CO on a primary facility route.)
- g) begin restoring service to CLECs and other customers.

5.2.4 Loss of a Facility Hub

In the event that BellSouth loses a facility hub, the recovery process is much the same as above. Once the NMC has observed the problem and administered the appropriate controls, the ECC will assume authority for the repairs. The recovery effort will include

- a) placing specialists and emergency equipment on notice;
- b) inventorying the damage to determine what equipment and/or functions are lost;
- c) moving containerized emergency equipment to the stricken area, if necessary;
- d) reconnecting service for Hospitals, Police and other emergency agency customers of CLECs and BellSouth in a nondiscriminatory manner in accordance with NSEP-TSP guidelines; and
- e) restoring service to CLECs and other customers. If necessary, BellSouth will aggregate the traffic at another location and build temporary facilities. This alternative would be viable for a location that is destroyed and building repairs are required.

5.3 COMBINED OUTAGE (CLEC AND BELL SOUTH EQUIPMENT)

In some instances, a disaster may impact BellSouth's equipment as well as the CLECs'. This situation will be handled in much the same way as described in section 5.2.3. Since BellSouth and the CLECs will be utilizing temporary equipment, close coordination will be required.

6.0 T1 IDENTIFICATION PROCEDURES

During the restoration of service after a disaster, BellSouth may be forced to aggregate traffic for delivery to an CLEC. During this process, T1 traffic may be consolidated onto DS3s and may become unidentifiable to the Carrier. Because resources will be limited, BellSouth may be forced to "package" this traffic entirely differently than normally received by the CLECs. Therefore, a method for identifying the T1 traffic on the DS3s and providing the information to the Carriers is required.

7.0 ACRONYMS

CO	-	Central Office (BellSouth)
DS3	-	Facility that carries 28 T1s (672 circuits)
ECC	-	Emergency Control Center (BellSouth)
CLEC	-	Competitive Local Exchange Carrier
NMC	-	Network Management Center
SWC	-	Serving Wire Center (BellSouth switch)
T1	-	Facility that carries 24 circuits